THE CONSTITUTIONAL RELATIONS OF ENGLAND AND HER DEPENDENCIES.

According to the last official statistics published by the Colonial Office, the Colonial Empire of Great Britain—excluding Great Britain itself and India—extended over some 9,750,000 of square miles, with an estimated population of between 23,000,000 and 24,000,000—the distribution of which is thus summarized:

Countries.	Area (Sq. Miles).	Population.
Europe	3,700	427,000
Asia	124,000	5,279,000
Africa	2,515,000	5,304,000
America	3,958,000	5,733,000
West Indies	12,000	1,514,000
Australasia	3,175,000	4,926,000
Total	9,797,700	23,283,000

If we add to these figures,

The United Kingdom	121,180	40,000,000
India	1,560,110	289,000,000

the total area and population under the Crown of England will be nearly 11,500,000 square miles with some 350,000,000 of inhabitants.

It would be impossible to say, without a very elaborate examination of statistics, what proportion of the above area and population can really be regarded as British. But speaking roughly we may say that Canada, Australasia, and a great part of the Cape of Good Hope are true British colonies in the sense that the bulk of the population is of British descent, with English law for their personal law, and that they may be expected to expand into great English-speaking nations. Of course a considerable number of persons of pure British descent are to be found in the other parts of the empire, but for purposes of enumeration they may be set off against the non-British in the British colonies proper. The latter would, on this calculation, contain an area of some 7,000,000 or 7,500,000 square miles, and a population of about 12,000,000.

I will not attempt to give any detailed account of how this great empire has been built up. Part of it was acquired by conquest—or as the result of wars—but it is to the peaceful

industry and enterprise and natural aptitude for colonization of her sons that England owes the greater part of her colonial empire. The foundation of this empire was laid by the acquisition of Newfoundland in 1583—and the last act of expansion was the arrangement with other European Powers of 1890 by which England acquired, or was acknowledged to have the right to acquire, some 2,500,000 out of the 11,000,000 of square miles which is the estimated area of the whole of Africa.

The formal constitutional relations between England and her colonies and dependencies is the same for all in the sense that all form part of the dominions of the Crown, and are, in theory, governed by the Crown through the colonial secretary, the history of whose office is briefly this:

In July, 1660, the management of the affairs of the colonies was entrusted to a committee of the Privy Council, which, in the following December, became the Council of Foreign Plantations. This, in 1672, was united to the Council of Trade, and the joint body was styled the Council of Trade and Plantations. It was suppressed in 1677, but revived in 1695, and continued to exist down to 1782. In 1768, when the unfortunate quarrel between England and her American colonies had commenced, a secretary of state for the colonies was for the first time appointed. But both he and the council were abolished in 1782, when the quarrel ended in the complete loss of America, and the affairs of the colonies that remained to us were again made over to a committee of the Privy Council This committee was formally constituted in 1786 and subsequently developed into what is now known as the Board of Trade, but after the outbreak of the French War in 1793, the committee ceased to have anything to do with colonial affairs. These were first made over to the Home and then to the War Office, and in 1801 a new office of secretary of state for war and the colonies was created. This arrangement continued till 1854, when the outbreak of the Crimean War, as well as the rapid growth of the Australian colonies necessitated a separation of the two offices. Since then the secretary of state for the colonies has had sole charge of their affairs.

But although the colonies and dependencies are alike in so

far as they are, in theory, governed by the Crown through the colonial secretary, their real government presents every variety of constitutional relations, from complete dependence to practical independence. Apart from mere posts occupied for naval or military purposes, such as Gibraltar, Adeb, Perim, and Wai-o-Wai, which are under the Admiralty or War Office, or the government of India, and "protectorates" or "spheres of influence," such as Uganda, Zanzibar, the Niger Coast, and the North Borneo Company, which are under the Foreign Office, there are under the Colonial Office forty distinct and, as regards each other, independent governments or administrations. Of these forty, eleven are what is called "self-governing colonies," *i. e.*, practically independent governments with parliaments of their own. The remaining twenty-nine may be grouped as follows:

I. Without any Legislative Council, that is, where the power of legislation is vested in the officer administering the government 4
These may be subdivided into—
(*a*) Where the Crown has reserved to itself the power of legislating by order in council. Malta, Labuan, St. Helena 3
(*b*) Where it has not reserved this power. Basutoland 1
II. With Legislative Councils nominated by the Crown, 16
(*a*) In which the Crown has reserved the power of legislating by order in council 15
(*b*) Where it has not reserved this power . . . 1
III. With Legislative Councils, partly nominated by the Crown and partly elected 9
(*a*) In which the Crown has reserved the power of legislating by order in council 6
(*b*) In which it has not reserved the power . . 3

In the case of all these twenty-nine colonies or dependencies the control of the Crown is a real control. Where there is no Legislative Council the officer administering the government acts entirely under instructions received from Home. In the others the case is the same in all executive matters, and

even where the Legislative Council contains the largest elected proportion of members, its powers of legislation are by no means complete, that is to say the colonial secretary, even when he does not require bills to be submitted to him for approval before they are introduced into council, would not hesitate to advise the Crown to veto any bill passed by the council which he considered objectionable.

But in the eleven "self-governing" colonies the case is very different. They too, as I have said, are in theory, and by their written constitutions, so far as they have any, governed by the Crown through the colonial secretary. The administration is carried on in the name of a governor appointed by the Crown, through ministers whom he may choose and dismiss at pleasure, and he may veto the most deliberate acts of the legislature. But what we now understand in England by the term "constitution" is not the letter of documents (of which there are hardly any) creating, or defining the powers of any part of the body politic, but the general spirit in which custom, which has from time to time changed, and will continue to change, expects each different part to exercise its powers. Lord Macaulay, in the opening chapter of his History of England, says with reference to the constitution:

"The change, great as it is, which her (England's) polity has undergone during the last six centuries has been the effect of gradual development, not of demolition and reconstruction. The present constitution of our country is to the constitution under which she flourished 500 years ago, what the tree is to the sapling, what the man is to the boy. The alteration has been great, yet there never was a moment at which the chief part of what existed was not old. A polity thus formed must abound in anomalies, but for the evils arising from mere anomalies we have ample compensation. Other societies possess written constitutions more symmetrical. But no other society has yet succeeded in uniting revolution with prescription, progress with stability, the energy of youth with the majesty of immemorial antiquity."

Thus it is that whilst the constitution of England at the present day is practically a democracy, in the sense that the will of the people as expressed through a House of Commons

elected on a very broad suffrage, is really the supreme power in the state, the sovereign retains not only the titles, but also, in theory, the powers of the Tudor and Stuart monarchs, and the House of Lords has at least the same power as the House of Commons. Yet if either the Crown or the House of Lords were to attempt to exercise their powers in opposition to the House of Commons their conduct would be denounced as "unconstitutional," not because it would be a breach of letter of the constitution, but because it has become a recognized principle that the Crown can only act on the advice of responsible ministers and that the House of Lords, though it may and should reject hastily considered measures, or measures as to the expediency of which the opinion of the nation is divided, is not justified in opposing a deliberate and definite expression of the national will.

A similar spirit pervades the constitution of the self-governing colonies with reference both to their internal government and their relation to the mother country. I will not attempt to trace the history of these colonies, or of any of them, in detail, or to explain the technicalities of their existing constitutions. Speaking broadly, it is as true of them as of the English constitution, that the present state of things is the result of natural development. In its early days the head of a colony must have full powers, and these must be derived from the Crown, that is the responsible government of the mother country, and be exercised under the control of the Crown. When the colony begins to gain strength, its leading men may be selected to assist the governor with their advice and share his powers, and the control of the Crown will be relaxed. As the strength of the colony increases, the nominated council may give place to an elected one, and the control of the Crown reduced to a minimum. This is the stage which has been reached by the "self-governing colonies," and, as I have said, it has been reached gradually, not by blindly adopting a particular form of government on account of its theoretical beauty, but by from time to time applying the form most suitable to the circumstances of each particular case. There is a great danger in political (of course I do not use the word in its party sense) as well as in other

matters—not excluding even the law, of following theories instead of attending to the facts. This danger is particularly great when a country whose government is based on a democratic, or popular, foundation is dealing with the affairs of a colony or dependency. Because certain arrangements, such as the practical vesting of supreme power in a popular assembly, trial by jury, liberty of the press, work well, or are a necessity in the mother country, it is assumed that they are great and eternal truths which will work equally well in all communities, and that they must be applied regardless of consequences, even though popular elections may result in a war of races, or chaos, trial by jury in gross miscarriage of justice, and liberty of the press, in anarchy. The true democratic or popular principle is, I believe, this, that all governments exist, or should exist, for the good of the governed, and that the best form of government for every community is the one which is under the particular condition of each case most calculated to promote this good. The relations between a mother country and her colonies and dependencies resemble very closely those between a parent and child. If it is incumbent on the parent to protect and control a child in its infancy it is equally incumbent on him to recognize the fact that the child grows into the man, and that as he does so, advice must take the place of command, and at last even advice must not be obtruded unasked. I do not wish to refer to any of the details of what I have already spoken of as the unfortunate quarrel between England and her American colonies, but I think that it may be said with truth that the chief cause of it was England's failure to recognize the fact that her child had grown up. She has learned a lesson from the past, and whatever may be the formal constitutional relations between England and her grown-up colonies, the real tie between them is that of family affection. The value of such a tie is as great in public as in private life, and it was never more strongly shown than at the present moment, when from all parts of the empire England's children are rallying to her side, ready to spend their money and their lives in her defence, each colony vying with the others as to which can do most for the common mother, and best serve their much-loved Queen.

To the very brief sketch which I have attempted to give of the constitutional relations between England and her colonies, I must add a few words regarding these relations between her and India. India is not, and never can be a colony, that is, a country occupied to any appreciable extent by settlers of British descent. Its organization, social and political, is entirely its own, though its government is completely controlled by England. It is the greatest of England's "dependencies," and a most perfect illustration of the true meaning of the term. Although India is often described as having been conquered, or acquired by the sword, the description is very inaccurate. The real source of the acquisition was, as in the case of the colonies—the peaceful industry and enterprise of England's own children. The foundation of the empire was a curious one—it was due to a rise in the price of pepper. The Dutch who had a monopoly of the Eastern trade, raised the price of all spices to such an extent, that in 1600 a few merchants of the city of London determined to send out one or two ships of their own. Their enterprise was successful, it was repeated, and developed into a regular trade. The merchants became a chartered company, with a monopoly and established depots, or factories. Bombay came to England as part of the dowery of the Queen of Charles II. Madras was founded in 1664 and Calcutta in 1698. The factories grew into possessions, and their guards into a powerful army. Clive made these possessions a power, and Warren Hastings made this power an empire, of which he was made governor-general in 1774. It was Pitt's Regulating Act of that year which first established any real constitutional relations between England and India. This was done by constituting England a committee of the East Indian Company's directors, presided over by a cabinet minister, called the "president of the board of control," for the management of the "political" affairs of the company, by associating with the governor-general members of council appointed from home, and by establishing at each presidency town, that is at Calcutta, Madras and Bombay, a supreme court whose judges were English barristers. This arrangement lasted till 1860, when the East India Company ceased to exist, and the Crown assumed the direct government of India.

But the organization of the new government was framed, in the main, on the lines of the old one. In England a secretary of state took the place of the old "president of the board of control," and his council, varying in number from ten to fifteen, and composed of persons, official and non-official, of the greatest Indian experience, took the place of the old company's committee. The secretary of state cannot impose any burden on the finances of India without the consent of his council, and he is supposed to consult it and be guided by its advice in all other matters. But he may, and he not infrequently does, act independently of his council, or disregard its advice, not, I fear, always to the benefit of India.

In India the governor-general became also viceroy, but his powers and those of his executive council, which consists of a legal member and a financial member, usually sent out from England, and a military member, and two civilians selected from the civil and military services in India, remained much as before. Each member of council has special charge of some department of the government, and, like a cabinet minister in other countries, disposes of all minor matters connected with it. All matters of importance are dealt with by the whole council, but the viceroy is not bound by a vote of the majority, nor would a member who was outvoted think it necessary to resign. He would merely record a minute setting forth his reasons for dissenting from the policy adopted. No doubt the original intention of the framers of this constitution was that the opinion of the members of council should be given perfectly independently by them as Indian experts, that the viceroy should also form an independent judgment after giving due weight to this opinion, and that the secretary of state in England should only overrule the viceroy for very special reasons. I would not imply that the members of the council have ceased to give independent opinions, and they have most carefully kept themselves free from English political parties. But the course of events in India and its vicinity, which has made many Indian questions English or European questions, and more especially the telegraphic connection between India and England, has tended to reduce the government of India to a more subordinate position, and to make its

highest officers not men left to act independently with a possibility of having their action set aside, but mere officials appointed to carry out orders or a policy resolved on at home.

A very erroneous ideal prevails about the government of India and its officers in matters of internal administration. It is very generally supposed that the executive government and its officials down even to its district officers can issue what orders they please, and that these orders have the force of law. Nothing can be further from the truth. No doubt this was the state of things under the native governments which preceded the British, and it continues, with certain reservations, in the native states at the present day. But in British India the powers of the government and its officers were created solely by the written law, and are strictly limited by it. There is no royal prerogative by common law, and no inherent power in any class or any individual to rule over others. The whole population is on a footing of the most perfect legal equality, and if any one issues an order to another he must show that the power to do so was conferred on him by a certain section of a certain act, either of parliament or the Indian legislature, and punishment for disobedience of the order could only be inflicted by a regular court of law, after a proper trial. If the viceroy himself were to be personally assaulted by a common coolie, the latter would not, as in most Eastern countries, be led off to instant execution, he would have to be prosecuted before a magistrate, and could only, on conviction, receive the sentence prescribed by law.

No doubt in its inception the British Government did succeed to the powers of the government it displaced, and its executive orders were regarded as laws. But as soon as Pitt's Act of 1774 gave a definite shape to the constitution of India, the distinction was drawn between mere executive orders, and regulations by the governor-general in council which were drawn up in the form of statutes and were intended to be observed as laws. In 1833 a Legislative Council, consisting of the viceroy and his executive council, with the addition of other members, official and non-official, nominated by him, was created and the power of legislation was transferred to it

alone. Lord Macaulay went out to India as its first legal member of council, and the India Penal Code which, though it was not formally passed till 1860, was drafted by him, would even if he had written nothing else, remain forever a monument of his genius. The council was enlarged in 1861, and it has been further enlarged of late years, chiefly by the addition of non-official members, a few of whom are elected, or rather nominated to the viceroy for approval, by bodies such as the Calcutta Chamber of Commerce, and members have been given a right of interpellation. Some of these changes can hardly be regarded as improvements, and they were probably adopted merely in order to avoid still more mischievous ones. In its proper sphere, that is as a machine for passing laws, the council has done admirable work. In addition to the Penal Code to which I have referred, it has given us most complete codes of Civil and Criminal Procedure, and a "Contract Act" and an "Evidence Act," which embody the cream of English and American law. The ordinary process of legislation in India is this: Bills are introduced into council, not to satisfy some political cry or "fad," but to meet some real want which has been pressed on the notice of government. On their introduction they are not only published in the *Government Gazette* and leading newspapers, English and vernacular, but they are also specially sent for opinion to those persons, official and non-official, Europeans and natives, who are likely to have any opinion worth giving. The opinions received are carefully considered by a select committee of the council, who then report the bill to the council generally with their recommendations. It is then debated in the usual way and passed into law or rejected, as the case may be. To attempt to turn this body into a parliament or anything resembling a parliament, will considerably impair its efficiency as a machine for legislation as to any general establishment of parliamentary institutions in India. I can only repeat what I have already said as to the danger of applying theories without regard to facts. The natives of India who form themselves into congresses and pass resolutions, in no sense represent the people of India or express their true wants. They merely represent a somewhat

numerous body of persons who have received an English education at government expense, and who, on failing to obtain government employment, think that they will at least obtain notoriety by going into opposition. Their mode of thought and speech, and even of their sedition, when they are seditious, is not that of India but of an imitation Europe.

Between the Legislative Council and England the constitutional relation is that the council has full power to legislate on all matters within the limits of British India, and the Crown, acting through the secretary of state, has merely the power of veto. It was intended that all members of the council, official as well as non-official, should deal with all matters in a perfectly independent spirit, and that the power of veto should only be exercised in extreme cases. But, as in executive matters, there has been a tendency on the part of the secretary of state to encroach on the powers of the government of India. Under the cover of the power of the veto, he requires the more important measures of government to be submitted to him for approval before the bills to give effect to them are introduced into the council, and its official members are expected, though not to the same extent as in England, to support the bills that may thus be introduced.

Besides the power of control over the making of laws which I have endeavored to explain in the above remarks, there exists for all the colonies, self-governing or dependent, and for India, a very real control over the administration of the law, which is exercised by the Judicial Committee of the Privy Council. This body is the final court of appeal for all parts of the British Dominions outside the United Kingdom. Cases come before it from all quarters of the globe, and it has to act as the final interpreter of almost every known system of law, English, Colonial, Hindu and Mohammedan, and even the still more intricate systems of customary or tribal law, by which most of the native races are governed. Yet, strange to say, this supreme court is not, strictly speaking, a court at all. Its jurisdiction arises simply out of the right of every British subject, who believes that a wrong has been done him, to petition his sovereign personally for redress. Of course there are limits imposed by the various legislatures

as to the nature and value of the cases in which an appeal to Her Majesty in council is allowed, but when it is allowed it takes the form of a petition to the sovereign, which is referred by her to certain select members of her Privy Council for consideration. They consider it not as a bench of judges sitting in state, but as a small group of elderly gentlemen in plain clothes, seated at the end of an office table, and the result of their deliberations is recorded, not in the form of a decree of a court, but merely as "humble advice" to Her Majesty to take certain action. It is needless to say that Her Majesty always does act on the advice given, but the whole procedure is a curious illustration of the affection of the English constitution for old forms long after the substance has completely changed.

In concluding this brief sketch of the constitutional relations between England and her colonial empire, I cannot, in the presence of an American audience, refrain from giving expression to the thought, which must often occur to most Englishmen, what would that empire have been if you had continued to form part of it? In its mere external form it would have been an empire extending over more than 15,000,000 of square miles, and containing in addition to nearly 300,000,000 British subjects of other races, a population of 130,000,000 of English-speaking freemen, and its internal strength would have been greater even than its form. I have said that the chief cause of our losing you was that England failed to recognize when her child was grown up. It may be that the child was so strong and vigorous, and his future in life so great, that the most judicious treatment would have failed to permanently retain him even in a nominal dependence on his mother. If this is so, if we must have parted company some day, at any rate we need not have parted in anger. But time softens the bitterness of even the most serious family quarrels, and I think it may be truly said that in ours all sense of bitterness passed away a hundred years ago, and that the lesser feelings of jealousy and estrangement have gone also. Year by year the two great kindred nations are drawing closer and closer together, they are learning to understand one another better, to rejoice with each other in prosperity, to

sympathize with each other in trouble, to recognize the truth of the old saying that "blood is thicker than water," and to feel that we are not merely friends with interests and feelings in common, but are truly members of one family. When we come to you we receive even more than a family welcome, and when you come to us it is not to see a strange country, but to revisit your old home. Many of you, I am glad to say, visit Oxford in the course of your tours, and I have no doubt that, as you gaze on the old colleges and recall their founders and benefactors and the history of the times in which they lived, it is a pleasure to you to feel that this history is your history, that these men were your ancestors, and that you have as good a right to claim admission to the colleges as founder's kin as any inhabitant of the British Isles.

Sir Charles Arthur Roe.

Samuel Dickson, in presenting the building on behalf of the Trustees of the University to the Faculty of the Law Department, said:

"Mr. Provost: The first duty of the representative of the Trustees upon this occasion, is to acknowledge that it is to your courage and exertions we owe it that this building has been erected on this site, for no one else thought it possible to obtain a sum sufficient for the necessary expenditures; and it is equally imperative to say to you, Mr. Dean, that to the patient and intelligent supervision by yourself and colleagues, of every detail of arrangement, must be ascribed, in large measure, the perfect adaptation of the building, in all its parts, to the uses to which it is to be devoted.

Upon its formal dedication to the teaching of the law, every lawyer present will naturally recall the first lecture delivered in 1790 by James Wilson, one of the Associate Justices of the Supreme Court of the United States. Upon that occasion were present President Washington, members of his cabinet and of Congress, with Mrs. Washington and other ladies. The event was regarded as of the first importance, and it has continued to be so by reason of the course of lectures deliv-